



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

February 23, 2023

Re: FOIA Request NLRB-2023-000657

Dear Ms. Augusta Saraiva (Bloomberg):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on January 24, 2023, in which you seek all records pertaining to *SSA Marine*, Case No. 19-CA-305230, including the letter approving the withdrawal request.

We acknowledged your request on January 24, 2023.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, NxGen, the requested case has been identified as being related to another NLRB case that is currently pending before the Agency. Given the open status of that related proceeding, Exemption 7(A) of the FOIA permits the Agency to withhold records or information from any or all related case files, even if the requested case is closed, if disclosure could reasonably be expected to interfere with the related, pending proceeding. 5 U.S.C. § 552 (b)(7)(A); *See New England Med. Ctr. Hosp. v. NLRB*, 548 F.2d 377, 385-86 (1st Cir. 1976); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). This is because the FOIA is not intended to function as a private discovery tool. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. at 242. The protections of Exemption 7(A) extend to any record whose release would enable a respondent or potential respondent to tailor a defense or otherwise obtain an unfair litigation advantage by premature disclosure. *See Ehringhaus v. FTC*, 525 F. Supp. 21, 23-24 (D.D.C. 1980); *Swan v. SEC*, 96 F.3d 498, 499-500 (D.C. Cir. 1996). Moreover, the protection applies until all reasonably foreseeable administrative and judicial proceedings conclude. *See Juarez v. Dep't of Justice*, 518 F.3d 54, 58-59 (D.C. Cir. 2008). Thus, the investigatory records contained in the requested case file that may be responsive are protected from disclosure at this time.

Specifically, notwithstanding that the requested case, *SSA Marine*, Case No. 19-CA-305230 (the CA case) is closed, it is related to an open unfair labor practice case currently being investigated by Region 19 (*ILWU Local 19 and International*

Longshore and Warehouse Union (PMA and SSA Marine), Case No. 19-CB-305232) (the CB case). Consequently, Exemption 7(A) is applicable, since disclosure of records from Case 19-CA-305230 would harm and/or interfere with the related, pending investigation of the CB case. Accordingly, your request is denied to the extent that the investigatory records in the requested case file are being withheld in full pursuant to Exemption 7(A) while the CB case remains open.

Your request is granted to the extent that the formal records in the requested CA case are releasable, as they are available to the public pursuant to NLRB FOIA regulations, regardless of the open/closed status of a case. The formal records at this time consist of the charge, initial docketing letters, a notice of appearance by employer counsel, and the specifically requested Regional Director's letter approving the withdrawal of the charge. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records, pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that the Exemption 7(A) protection is "temporal in nature." *Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the CB case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

To track the status of the open, related CB case on the Agency website at www.nlr.gov, you can go to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/19-CB-305232>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person "actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nlrb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss

any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:
<https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the

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90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling
FOIA Officer

Attachment: (11 pages)